THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24505 OF 2005

DATED:13.12.2005

Between:

N.V.R. Cooperative Sugars Limited

Nampani, Guntur District, rep. by

Chairman Sri Nannapaneni Linga Rao

S/o.Sri Basavapunnaiah

Nandivelugu Village,

Tenali Mandal, Guntur District

…Petitioner

And

The Government of Andhra Pradesh

Rep. by its Principal Secretary

Public Enterprise Department

(Implementation Secretariat),

D- Block, 3rd Floor, Secretariat,

Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24505 OF 2005

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ORDER:

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N.V.R. Co-operative Sugars Limited (hereafter called, the Sugar Mill), filed the instant Writ Petition seeking a Writ of Mandamus declaring the action of the respondents 1 and 2 in releasing the amounts collected pursuant to proceedings under Section 12-A of the A.P. Cooperative Societies Act, 1964 (the Act, for brevity) recovering the amounts due to the petitioner society from the third respondent as illegal, fraudulent, mala fide and without jurisdiction and contrary to the undertaking given by them to this Court in the counter affidavit filed in W.P.No.23517 of 2003 and further direct the respondents to pay a sum of Rs.1,45,32,000/- with interest at the rate of 15%. The matter was listed in Motion List on 17.11.2005. This Court issued notice to the learned Advocate General for the State, who appeared and argued the

matter on 21.11.2005. At the request of the learned counsel for the petitioner, the matter was adjourned and again the learned counsel for the petitioner is heard on 28.11.2005, and is being disposed of by this order at the admission stage.

The brief fact of the matter is as follows. The petitioner is a society registered under the Act running sugar mill. The State of Andhra Pradesh amended A.P. Cooperative Societies Act by inserting Section 12-A empowering the Government to transfer the assets of a cooperative society to another person in the event of a society becoming sick or in the event of such society being a manufacturing facility seizing to undertake its operations or take up marketing and commercial operations. The said provision was assailed in a batch of Writ Petitions before this Court. The petitioner herein filed W.P.No.26875 of 2003. This Court allowed all the Writ Petitions, including the one filed by the petitioner, declaring part of Section 12-A of the Act as unconstitutional. Be that as it is, subsequent to inserting Section 12-A of the Act and while the Writ Petitions were pending, the Government of Andhra Pradesh initiated proceedings for transferring the unit of the petitioner and appointed Implementation Secretariat (IS) as an agency for the purpose. The IS selected the third respondent as preferred bidders on 18.11.2002 and issued instructions to the Managing Director (MD) of the petitioner to handover the assets of the petitioner to the third respondent. In accordance with the decision of the IS, the MD entered into agreement with third respondent agreeing to transfer the unit and assets for a total consideration of Rs.14.50 crores, after receiving part sale consideration of Rs.3.62 crores. Even before the sale/transfer could be materialized, on 25.12.2002 the MD of the petitioner entered into licence agreement with third respondent and handed over the sugar mill during the crushing season 2002-2003 (upto 31.3.2003). The third respondent used the manufacturing facility of the petitioner sugar mill for the said sugar season without paying alleged licence fee of Rs.1,45,32,000/-. Subsequently, first respondent cancelled the sale agreement owing to default on the part of the third respondent in paying the balance sale consideration and returned the advance amount paid by the third respondent without deducting licence fee.

The Vice-Chairman and some of the Directors of the petitioner cooperative sugar mill filed W.P.No.23517 of 2003 against respondents 1 and 2 herein and against the petitioner questioning the action of the first respondent in not finalizing the claim for re-imbursement by the third respondent and for a direction restraining the first respondent from releasing the amount to the third respondent. The first respondent filed a counter affidavit in the said Writ Petition in which an undertaking was allegedly given that all necessary steps will be taken to safeguard the interest of the society and that the Government has decided to fix the licence fee for the use of plant and machinery during the crushing season 2001-2002. In view of the undertaking, the Writ Petition was withdrawn by the petitioners therein. However, in collusion with the third respondent, in a fraudulent manner, first respondent, on the advice of the second respondent, has not taken any steps for recovering licence fee. The petitioner then issued a legal notice on 29.8.2005 calling upon the respondents to pay a sum of Rs.1,45,32,000/- being the licence fee, the cost of stores, and the cost of Biss sugar, in vain. Therefore, present Writ Petition is filed.

A lengthy counter affidavit is filed by the Principal Secretary to Government in Public

Enterprises Department (PED) opposing the Writ Petition. A reference in detail to the same would be superfluous. Salient aspects are noticed, as follows. The sale and purchase agreement and licence agreement were executed by and between petitioner society and third respondent after disposal of Writ Petition being W.P.No.21535 of 2003. The licence was granted to third respondent to operate the sugar mill for the season 2002-2003 pending transfer of legal title to them. Third respondent operated the sugar mill as licensee for the season, but failed to pay the balance purchase money within stipulated time and therefore the sale and purchase agreement was terminated on 18.8.2003. The Commissioner and Director of Sugars appointed independent Chartered Accountant (CA) who determined the amounts payable by third respondent inter alia as compensation/rent for operating sugar mill for the crushing season 2002-2003. The CA submitted a report in April 2004 determining a sum of Rs.103.32 lakhs as compensation/rent for the use of sugar mill. But the third respondent contested all the claims when they were informed by the Government by letter dt.8.6.2004. The matter was referred to Law Department for their opinion. The Law Department opined that the agreement of licence does not provide for payment of any licence fee or rent for use and operation of the sugar mill and that the Government can claim retaining allowance for the employees. Therefore, the Government decided to recover a sum of Rs.29,29,068/- to meet the claims of the petitioner against the third respondent towards retaining allowance to the seasonal employees, and the value of Biss sugar. The Government also decided that from the amount of Rs.1,50,00,000/- retained by the IS, it can refund a balance of Rs.1,20,70,932. The decision was ratified by Group of Ministers (GoM) on Public Enterprises. It is further stated in the counter affidavit that on onset of crushing season for 2002-2003, the petitioner society was not in a position of running the mill and therefore it was decided to permit the third respondent to run the mill who incurred the expenditure for operating the mill for the season including payment of salaries and cane price. If the Mill had not been run, the society would have incurred losses by way of salaries and cane price. The Government permitted third respondent to run the mill for the crushing season keeping in view the best interest of the petitioner, its workers and employees, and cane growers. The allegation that MD of the petitioner permitted the third respondent to run the unit at the instance of the respondents 1 and 2, is denied. The Government has taken all necessary steps as detailed in the counter affidavit filed in W.P.No.23517 of 2003 and based on the opinion of the Law Department, decided not to collect any licence fee except the amounts permissible under the licence agreement.

It is further stated that a sum of Rs.50,00,000/- was allocated to the petitioner for repairs and maintenance, and a further sum of Rs.60,00,000/- was allotted for three months salaries to the employees. But the petitioner spent only Rs.33,63,000/- lakhs towards repairs and maintenance. In the meeting held in the Chambers of the Principal Secretary to PED on 22.7.2003, in which representatives of the petitioner participated, it was decided that the third respondent is not liable to pay expenditure incurred by the petitioner prior to 25.12.2002 towards repairs and maintenance, and the allegation that second respondent deliberately released the amounts to third respondent without deducting the amounts payable to petitioner society is contrary to the undertaking given in the counter affidavit filed in this Court, is baseless and

incorrect.

The learned counsel for the petitioner, Sri M.V.Durga Prasad, strenuously contends that the IS has colluded with third respondent and went on issuing directions to MD of the petitioner unit to take action which only helps third respondent in undertaking repairs or in entering into sale/purchase agreement as well as licence agreement. The very licence agreement is *ultra vires* Section 12-A of the Act and therefore whatever benefit third respondent obtained under the said agreement is illegal. Secondly, he would urge that the Government appointed a CA to assess the amount payable by third respondent for the use of the sugar mill during the crushing season 2002-2003 and though such assessment was made, the Government intentionally did not take necessary steps for realising the amount. The amount paid by third respondent towards advance was released though initially a part of the amount was retained after cancellation of the agreement. He would urge that a duty is cast on the Government of Andhra Pradesh to recover the amounts due to the petitioner society by taking appropriate action in not paying any further amounts to third respondent.

Learned Advocate General for the State, Sri C.V.Mohan Reddy, submits that the licence agreement does not provide for levying of licence fee and therefore any action by the Government to mulct the third respondent with licence fee would be illegal and unsustainable. Secondly, he would urge that at all stages, the Government has taken steps in the interest of the petitioner society and if the petitioner is aggrieved by any amounts payable by third respondent, it has to seek remedies elsewhere and a Writ Petition would not lie, especially when the earlier Writ Petition filed by Vice-Chairman and other Directors of the petitioner Mill was already dismissed by this Court.

One Naga Malleswara Rao and seven others filed W.P.No.23517 of 2003 seeking a Writ of Mandamus declaring the action of the IS in not finalizing pending claims for reimbursement from second respondent pursuant to termination of sale-cum-purchase agreement as illegal and for a direction to the IS not to release ¼ of the amount to third respondent till a decision is taken. Admittedly, the Government of Andhra Pradesh filed a detailed counter affidavit in the said Writ Petition stating that necessary action would be taken in the matter. The third respondent herein opposed the Writ Petition on the ground that there is an arbitration agreement inter se the petitioner and the third respondent. The Division Bench of this Court by order dt.3.3.2004 dismissed W.P.No.23517 of 2003 as withdrawn as requested by the petitioners therein, observing as under.

> We need not go into the merits of the respective submissions made on behalf of the petitioners and by the first respondent or the second respondent since the learned counsel for the petitioners states that in view of the stand taken by the first respondent in its counter affidavit no purpose would be served in arguing the matter and he likes to withdraw the writ petition. Learned counsel for the second respondent states that any observations made are likely to affect adversely against second respondent and might be used as a weapon to withhold its legitimate amounts by the first respondent.

> As we had already observed, we need not go into the merits of the matter or objection of the second respondent, but we will proceed to dismiss the writ petition as withdrawn. It will be open to the parties to agitate their respective claims before the appropriate forum.

The above order has become final. It was admitted therein that the dispute raised by the Directors on behalf of the petitioner herein is arbitrable and therefore this Court gave liberty to contesting parties to agitate the claims before the appropriate forum. In view of the same, this Court is not able to countenance any submission that this Writ Petition is maintainable which is in fact filed by Cooperative Sugar Mill for recovery of amounts from a third party allegedly due to the petitioner. This Court has gone through the counter affidavit in earlier writ petition filed by the Principal Secretary to Government in PED. On such perusal it is not possible to accept the submission that the Government gave undertaking to recover licence fee from the third respondent. Whatever be the purport of various covenants in the licence agreement, as rightly pointed out by the learned Advocate General, there is no covenant empowering IS or petitioner society to recover licence fee from the third respondent for running sugar mill during the crushing season 2002-2003. Indeed, Government has taken steps, in right earnest to explore the possibility of recovering the licence fee from third respondent. When legally it is not permissible, this Court cannot issue a direction or Mandamus to the Government to proceed against third respondent for recovering the licence fee as contended by the petitioner society.

The petitioner or its Directors are adopting peculiar method of seeking redressal from this Court. This Court, on a *prima facie* consideration, finds that at every stage, since the Government started implementing/enforcing Section 12-A of the Act, petitioner has been filing Writ Petitions one by the society and another by its Directors. Even with respect to cause of action in this Writ Petition, initially, the Vice Chairman and Directors filed a Writ Petition, which was dismissed as withdrawn by this Court observing that there is an arbitration clause. Again for the same relief, the present Writ Petition is filed and such conduct of the petitioner society has to be deprecated. The petitioner society has other remedies to recover the amounts from third parties if there is any amount legally due to them, and in this Writ Petition such a right cannot be enforced.

The Writ Petition is devoid of merits and is accordingly dismissed.

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(V.V.S.RAO, J)

13.12.2005

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